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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

17 SONOS, INC.,

18 Plaintiff,

19 vs.
20

21 GOOGLE LLC,

22 Defendant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF ITS MOTION *IN LIMINE*
NO. 4 TO EXCLUDE REFERENCES TO
ALLEGED ANTICOMPETITIVE
CONDUCT AND FINANCIAL
INFORMATION UNRELATED TO
ACCUSED PRODUCTS**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Google LLC (“Google”) hereby requests to file under seal portions of its Motion *in Limine* No. 4 to Exclude References to Alleged Anticompetitive Conduct and Financial Information Unrelated to Accused Products (“Motion *in Limine* No. 4”). Specifically, Google requests an order granting leave to file under seal the portions of the document listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Motion <i>in Limine</i> No. 4	Portions highlighted in yellow	Google
Exhibit 1 to the Declaration of Lana Robins in Support of Motion <i>in Limine</i> No. 4 (“Exhibit 1”)	Portions outlined in red boxes	Google
Exhibit 5 to the Declaration of Lana Robins in Support of Motion <i>in Limine</i> No. 4 (“Exhibit 5”)	Portions outlined in red boxes	Google
Exhibit 6 to the Declaration of Lana Robins in Support of Motion <i>in Limine</i> No. 4 (“Exhibit 6”)	Portions outlined in red boxes	Google
Sonos’s Opposition to Motion <i>in Limine</i> No. 4 (“Opposition”)	Portions outlined in red boxes	Google
Exhibit A to the Declaration of Joseph Kolker in Support of Sonos’s Opposition to Google’s Motion <i>in Limine</i> No. 4 (“Exhibit A”)	Portions outlined in red boxes	Google
Exhibit D to the Declaration of Joseph Kolker in Support of Sonos’s Opposition to Google’s Motion <i>in Limine</i> No. 4 (“Exhibit D”)	Portions outlined in red boxes	Google

II. LEGAL STANDARD

Civil Local Rule 79-5(c) provides that a party seeking to file its own documents under seal must file an administrative motion that articulates the applicable legal standard and reasons for keeping a document under seal, includes evidentiary support from a declaration where necessary, and provides a proposed order that is narrowly tailored to seal only the sealable material.

1 “Historically, courts have recognized a ‘general right to inspect and copy public records and
 2 documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447
 3 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 &
 4 n.7 (1978)). In the Ninth Circuit, two different standards may apply to a request to seal a document
 5 – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v. Plex Sys.,*
 6 *Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. For*
 7 *Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). “To seal records in
 8 connection with a ‘dispositive’ motion or a motion that ‘more than tangentially relate[s] to the merits
 9 of a case,’ ‘compelling reasons supported by specific factual findings that outweigh the general
 10 history of access and the public policies favoring disclosure’ are required.” *Bronson v. Samsung*
 11 *Elecs. Am., Inc.*, No. C 18-02300 WHA, 2019 WL 7810811, at *1 (N.D. Cal. May 28, 2019) (quoting
 12 *Kamakana*, 447 F.3d at 1178-79). “A particularized showing of ‘good cause’ under Federal Rule
 13 of Civil Procedure 26(c), however, suffices to warrant sealing in connection with a non-dispositive
 14 motion.” *Id.*

15 This Court has analyzed sealing requests in connection with motions *in limine* pursuant to
 16 the “good cause” standard for non-dispositive motions. *See, e.g., Gearsources Holdings, LLC v.*
 17 *Google LLC*, No. 18-CV-03812-HSG, 2021 WL 1123630, at *2 (N.D. Cal. Feb. 24, 2021) (“Because
 18 Defendant’s motion *in limine* is not a dispositive motion, the Court applies the lower good cause
 19 standard.”); *Racies v. Quincy Bioscience, LLC*, No. 15-CV-00292-HSG, 2019 WL 8438448, at *1
 20 (N.D. Cal. Dec. 16, 2019) (“Because the parties move to file documents related to their motions *in*
 21 *limine*, the Court will apply the lower good cause standard.”); *TVIIM, LLC v. McAfee, Inc.*, No. 13-
 22 CV-04545-HSG, 2015 WL 3776424, at *2 (N.D. Cal. June 16, 2015) (“Because motions *in limine*
 23 are nondispositive motions, the Court applies the ‘good cause’ standard to the pending motions to
 24 seal.”).

25 **III. THE COURT SHOULD SEAL GOOGLE’S CONFIDENTIAL INFORMATION**

26 Material that is confidential and could harm a litigant’s competitive standing if disclosed
 27 may be sealed under the good cause standard. *See, e.g., Skillz Platform Inc. v. AviaGames Inc.*, No.
 28 21-CV-02436-BLF, 2022 WL 875654, at *2 (N.D. Cal. Mar. 24, 2022) (finding “good cause to file

1 the documents and portions of documents at issue under seal given the sensitive financial and
2 business information they contain”); *Dugan v. Lloyds TSB Bank, PLC*, No. 12-CV-02549-WHA
3 NJV, 2013 WL 1435223, at *2 (N.D. Cal. Apr. 9, 2013) (“There may be ‘good cause’ to seal records
4 that are privileged, contain trade secrets, contain confidential research, development or commercial
5 information, or if disclosure of the information might harm a litigant’s competitive standing.”).

6 The portions of Motion in Limine No. 4 highlighted in yellow and the portions of Exhibit 1,
7 Exhibit 5, Exhibit 6, Sonos’s Opposition, and Exhibit A outlined in red boxes contain confidential
8 information regarding Google’s highly sensitive financial and product revenue data, such as
9 advertising and subscription revenue, internal lifetime value analyses, and costs information, as well
10 as figures from which a competitor could deduce Google’s highly sensitive financial and product
11 revenue data. Public disclosure of this information would harm the Google’s competitive standing
12 and create a risk of injury by providing competitors with access to information that Google does not
13 have similar access to about their competitors, allowing them to gain a competitive advantage in the
14 marketplace. Declaration of Jocelyn Ma (“Ma Decl.”) ¶ 3. If such information were made public,
15 Google’s competitive standing would be significantly harmed. Google has therefore designated this
16 information as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY under the protective
17 order (Dkt. 92). This Court has previously granted sealing of the same and/or similar information.
18 *See, e.g.*, Dkt. 334 at 4.

19 The portions of Exhibit D outlined in red boxes also contain confidential licensing
20 negotiations that are not public. Public disclosure of this information would harm Google’s
21 competitive standing and its ability to negotiate future licensing agreements by giving competitors
22 access and insight into Google’s highly confidential business thinking and asymmetrical
23 information about Google’s licensing strategies to other entities. Ma Decl. ¶ 4. If such information
24 were made public, Google’s competitive standing would be significantly harmed. Google has
25 therefore designated this information as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
26 ONLY under the protective order (Dkt. 92). This Court has previously granted sealing of the same
27 and/or similar information. *See, e.g.*, Dkt. 334 at 5.

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1 Finally, the portions of Exhibit 5, Exhibit 6, Sonos’s Opposition, and Exhibit A outlined in
2 red boxes also include confidential information regarding Google’s business and product strategy.
3 Public disclosure of this information could harm Google’s competitive standing and create a risk of
4 injury by providing competitors with access to information that Google does not have similar access
5 to about their competitors. Ma Decl. ¶ 5. If such information were made public, Google’s
6 competitive standing would be significantly harmed. Google has therefore designated this
7 information as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY under the protective
8 order (Dkt. 92).

9 A less restrictive alternative than sealing these portions of the above documents would not
10 be sufficient because the information sought to be sealed is Google’s confidential and highly
11 sensitive financial information but has been used by Google and Sonos in support of the briefing
12 filed in connection with Google’s Motion *in Limine* No. 4. Ma Decl. ¶ 6.

13 Google thus has good cause to keep such information under seal. *See, e.g., Arista Networks,*
14 *Inc. v. Cisco Sys., Inc.*, No. 16-cv-00923-BLF, 2018 WL 2010622, *2-3 (N.D. Cal. Apr. 30, 2018)
15 (sealing “highly confidential” information relating to litigant’s “financial information and internal
16 development strategies”); *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12-CV-
17 03844-JST, 2015 WL 12976921, at *3 (N.D. Cal. Mar. 31, 2015) (granting motion to seal “sensitive
18 business information regarding the amount of royalties received under a licensing agreement and
19 also detailed information regarding a confidential licensing and manufacturing agreement” under
20 the good cause standard); *Rodman v. Safeway, Inc.*, No. 11-cv-03003-JST, 2014 WL 12787874, *2
21 (N.D. Cal. Aug. 22, 2014) (sealing “internal, nonpublic information discussing [a litigant’s] pricing
22 strategy, business decisionmaking, and financial records”).

23 **IV. CONCLUSION**

24 For the foregoing reasons, Google respectfully requests that the Court grant Google’s
25 Administrative Motion to File Under Seal Portions of its Motion *in Limine* No. 4.
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1 DATED: April 26, 2023

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

2
3 By: /s/ Sean Pak

Sean Pak

4 *Attorneys for GOOGLE LLC*

ATTESTATION

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on April 26, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: April 26, 2023

By: /s/ Sean Pak
Sean Pak